



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 23-031

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

a. Relative to its statutory authority under s. 450.075 (4), Stats., the agency correctly identifies the optional nature of licensure contemplated under the proposed rule in s. Phar 18.03 (1). However, it may assist the reader to further explain the nature of licensure in the agency’s plain language analysis of the proposed rule. Similarly, and as noted in comment 5. e., below, the agency should review the proposed rule text that follows s. Phar 18.03 (1) for consistency with the optional nature of licensure under the proposed rule. For example, the statement that a license “shall be renewed biennially” in s. Phar 18.03 (3) (a) does not reflect the permissive nature of licensure.

b. In s. Phar 18.04, should the agency identify that the statutory requirements regarding inspections under s. 450.075 (6), Stats., apply regardless of whether a provider is licensed under ch. Phar 18?

c. Should the agency identify the unique, ongoing applicability requirements of s. 450.075 (7) (b), Stats., in the rule analysis or proposed rule text, or both?

2. Form, Style and Placement in Administrative Code

a. The text of s. Phar 18.03 (2) (a) should be revised to avoid further division beyond subdivision paragraphs. Subdivision paragraphs may not be further divided. [s. 1.10 (1) (b) 6., Manual.] In making such revisions, and throughout the proposed rule, the agency should ensure all rule provisions end in proper punctuation.

b. Introductory text (e.g., “is/have/has/submits”) in s. Phar 18.05 (1) (a) to (i) should be revised for consistency in order to maintain parallel structure in the list and with s. Phar 18.05 (1) (intro.). [s. 1.05 (1) (e), Manual.]

c. Throughout ss. Phar 18.06 and 18.07, review the end of each rule provision for consistency with s. 1.11 (3), Manual.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. Phar 18.03 (2) (a) 3. d. vi., replace “was names” with “was named” for verb tense agreement.

b. In s. Phar 18.04, add an oxford comma to the phrase “authored federal, state and local law enforcement officials”. [s. 1.06 (1) (b), Manual.]

c. In s. Phar 18.05 (1) (d), insert a period after “hours” and before “This subsection”.

d. In s. Phar 18.06 (1) (intro.), the phrase “ensure the following” should be removed for clarity. Similarly, in s. Phar 18.06 (2), remove “for all of the following”, and insert “to”.

e. As implied by ss. Phar 18.03 (3) and (4), 18.04, and 18.08, and other provisions in the proposed rule, it may aid clarity for the agency to explain, in its plain language analysis or notes to the proposed rule text, or both, how the concepts of disciplinary action and non-compliance with license requirements interact with the permissive nature of licensure under the proposed rule.

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

In the agency’s plain language analysis, it indicates that federal rules have not yet been finalized. Does the agency intend to update s. Phar 18.08 to specifically identify the federal regulations for which compliance is required under state licensure? Similarly, can the agency more specifically identify which state laws and regulations must be complied with in order to avoid disciplinary action under s. Phar 18.08? At this point in the rulemaking process, can the agency confirm that the substantive requirements of the proposed rule, such as those in ss. Phar 18.06 and 18.07, are no more strict than requirements under federal law, as required by s. 450.075 (4), Stats.?